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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,950	10/26/2007	Klaus Deinzer	042445.40088	3756
44955 7590 01/29/2010 SQUIRE, SANDERS & DEMPSEY L.L.P. 1 MARITIME PLAZA, SUITE 300 SAN FRANCISCO, CA 94111				
EXAMINER				
TANNER, JOCELYN C				
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3731				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/590,950

Applicant(s)

DEINZER ET AL.

Examiner

JOCELIN C. TANNER

Art Unit

3731

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/22)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

This Office Action is in response to the Amendment filed 14 January 2010. Claims 34-51 are currently pending.

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of the action mailed 17 August 2009 is withdrawn. This Office Action is a final action based on the amendments filed 6 May 2009 to overcome the rejections of the non-final Office Action mailed 25 November 2008.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 34-37, 40 and 42-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Ott et al. (US Patent No. 6,447,520).**

3. Regarding claims **34**, Ott et al. disclose a lens holder including two reinforced peripheral regions (70a, 70b), an elastic backing support (74a, 74b, 76) disposed between the two reinforced peripheral regions wherein the lens holder has an open position and closed position (column 6, lines 16-30), the backing support being formed of material that displays elasticity by allowing the backing support to be flexible and resilient such that the backing support is capable of returning to its original shape (Figs.

4, 5), wherein the lens holder in the open position is capable of receiving an intraocular lens in a relaxed state, wherein the lens holder in the closed position is capable of holding an intraocular lens in an elastically deformed state to be injected into an eye, wherein the elastic backing support is in a relaxed state when the lens holder is in an open position and is in an elastically deformed state when the lens holder is closed.

4. Regarding claim **35**, Ott et al. disclose a lens holder going from the open position (Fig. 4) to a closed position (Fig. 5) by bending the elastic backing support (74a, b, 76) at the hinge (76) to transform the backing support from a relaxed state to an elastically deformed state.

5. Regarding claims **36 and 40**, Ott et al. disclose a passage (62) capable of accommodating a deformed IOL that is formed by the elastic backing support (Fig. 3B).

6. Regarding claims **37, 43 and 44**, Ott et al. disclose two undercuts (Fig. 3C) at a transition region between the elastic backing support (74a, b, 76) and each of the peripheral regions (70a, b), wherein one of the undercuts (90) is larger at one end of the lens holder to form an inlet portion for a haptic, the undercuts being capable of retaining and guiding edges of an IOL.

7. Regarding claim **42**, Ott et al. disclose a passage formed in the closed position of the lens holder having a snail-shaped cross section (Fig. 3C).

8. Regarding claims **45**, Ott et al. disclose peripheral regions (70) having a recess that is formed by the wall portion (90) so that when an intraocular lens is inserted, an edge of the intraocular lens is capable of passing unhindered (Fig. 3C).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 38 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ott et al. (US Patent No. 6,447,520) in view of Kelman (US Patent No. 5,190,552).**

11. Regarding claims **38 and 46**, Ott et al. disclose a depression (84) that may extend a portion within the backing support (74a,b, 76) having a curvilinear chamfer (column 9, lines 1-5) to facilitate engagement of the IOL by the plunger rod (column 9, lines 57-62). However, Ott et al. fails to disclose a depression that is spherical.

Kelman teaches an IOL injector device including a spherical depression within the loading end (8) region from which the IOL is injected from the device (column 7, lines 40-47, Figs. 1, 6-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the lens holder of Ott et al., with a spherical depression, as taught by Kelman, to settle the lens and provide support for the lens on the platform before being ejected from the device (column 7, lines 40-47).

12. **Claims 39, 41 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ott et al. (US Patent No. 6,447,520) in view of Ott (US Patent No. 6,723,104).**

13. Regarding claims **39, 41 and 47**, Ott et al. disclose all of the limitations previously discussed except for an elastic backing support having a tapered region at one end between the peripheral regions, the tapered region forming a guide for a push rod.

Ott ('104) teaches an IOL insertion device including a cartridge (13) having a tapered transition portion (38) (column 5, lines 20-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a tapered region within the lens holder of Ott et al., as taught by Ott ('104), to compress the IOL into a more tightly folded configuration as it advances down the passage (column 5, lines 20-27).

14. **Claims 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ott et al. (US Patent No. 6,447,520) in view of Feingold (US Patent No. 5,499,987).**

15. Regarding claim **49**, Ott et al. disclose all of the limitations previously discussed except for connectable peripheral regions.

Feingold teaches a lens holder including two extensions (116, 118) having an alignment groove (120) that connects with an alignment rib (122) (column 9, lines 64-67, column 10, lines 1-6, Fig. 37).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the peripheral regions of Ott et al. with a groove and rib, as taught by Feingold, as means for aligning the peripheral regions (column 9, lines 64-67).

16. Regarding claim 51, Feingold teaches a catch element for retaining a lens holder within a housing wherein protrusions (126, 128) serve as means for wedging and securing the peripheral regions (116, 118) within the slot of the implantation device. (column 9, lines 45-51, column 10, lines 6-40, Fig. 38).

17. **Claim 50 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ott et al. (US Patent No. 6,447,520) in view of Buboltz et al. (US Patent No. 5,171,241).**

18. Regarding claim 50, Ott et al. disclose all of the limitations previously discussed except for peripheral regions having a gripping element.

Buboltz et al. teaches a protuberance (51) that extends slightly beyond the end of slot (52) to facilitate the removal of the holder (column 5, lines 30-40, Fig. 9).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the peripheral regions of Ott et al. with a gripping element, as taught by Buboltz et al., to facilitate removal of the device (column 5, lines 35-37).

Response to Arguments

19. Applicant's arguments filed 14 January 2010, with respect to the rejection(s) of the claim(s) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ott et al.

Conclusion

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nakajima et al. (US Patent No. 5,496,328) pertains to a lens holder for an IOL.

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **JOCELIN C. TANNER** whose telephone number is (571)270-5202. The examiner can normally be reached on Monday through Thursday between 9am and 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jocelin C. Tanner/
1/20/2010
Examiner, Art Unit 3731

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1/27/10